

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Danielle W. Gregoire

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the authority of the disabled persons protection commission pursuant to Chapter 19C.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Danielle W. Gregoire	4th Middlesex
James B. Eldridge	

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2081 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

**AN ACT RELATIVE TO THE AUTHORITY OF THE DISABLED PERSONS PROTECTION
COMMISSION PURSUANT TO CHAPTER 19C.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

1 **SECTION 1.** SECTION 1 OF CHAPTER 19C OF THE GENERAL LAWS, AS APPEARING IN THE 2004
2 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS: -

3 By striking out the first paragraph as so appearing on lines 1 and 2, and inserting in place thereof the following
4 words: -

5 FOR THE SOLE PURPOSES OF THIS CHAPTER, THE FOLLOWING WORDS SHALL,
6 UNLESS THE CONTEXT REQUIRES OTHERWISE, HAVE THE FOLLOWING
7 MEANINGS: -

8 Said Section 1 is further amended by striking out the words "chapter one hundred and twenty-three" as so appearing
9 in the definition of "Disabled person" on lines 16 and 17, and inserting in place thereof the following: -

10 CHAPTER ONE HUNDRED AND TWENTY-THREE B -

11 Said Section 1 is further amended by striking out the definition of "General counsel" or "counsel"
12 as so appearing on lines 20 and 21

13 SAID SECTION 1 IS FURTHER AMENDED BY AMENDING THE DEFINITION OF "REPORTABLE
14 CONDITION" BY STRIKING OUT THE WORDS "INCLUDING UN-CONSENTED TO SEXUAL ACTIVITY."
15 AS SO APPEARING ON LINE 42 AND INSERTING IN PLACE THEREOF THE FOLLOWING: -

16 . . . , including but not limited to, un-assented to sexual activity.

17 **SECTION 2.** SECTION 3 OF CHAPTER 19C OF THE GENERAL LAWS, AS APPEARING IN THE 2002
18 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS:

19 By amending subsection (d) of said section 3 by deleting the word "other" after the word "designate" and
20 before the words "state agencies" as so appearing on line 20

21 SAID SECTION 3 IS FURTHER AMENDED BY STRIKING OUT SUBSECTION (H) OF SAID SECTION 3 AS
22 SO APPEARING ON LINES 31 THROUGH 35 AND INSERTING IN PLACE THEREOF THE FOLLOWING: -

23 (h) to develop, in consultation with the secretary of the executive office of health and human services, standards for
24 referral of investigations to the agencies within the executive office of health and human services pursuant to section
25 four.

26 **SECTION 3.** SECTION 4 OF CHAPTER 19C OF THE GENERAL LAWS AS APPEARING IN THE 2002
27 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS:

28 BY AMENDING THE FIRST SENTENCE AS SO APPEARING ON LINES 1 AND 2 BY
29 INSERTING FOLLOWING THE WORDS "DISABLED PERSON," AND BEFORE THE
30 WORDS "THE COMMISSION SHALL:" THE FOLLOWING: --

31 . . . and subject to the commission's authority to conduct its own investigation

32 SAID SECTION 4 IS FURTHER AMENDED BY AMENDING SUBSECTION (B) OF SAID SECTION 4 BY
33 STRIKING OUT THE FIRST SENTENCE OF SAID SUBSECTION (B) AS SO APPEARING ON LINES 10
34 THROUGH 16 AND INSERTING IN PLACE THEREOF THE FOLLOWING: --

35 . . . refer immediately any such reports, which allege the occurrence of abuse to a disabled person whose caretaker
36 is an agency of the commonwealth, a facility licensed by an agency of the commonwealth or a private agency which
37 provides services or treatment to disabled persons pursuant to a contract or agreement with an agency of the
38 commonwealth, to an investigator of the commission or to the department within the executive office of health and
39 human services which has jurisdiction over the disability manifested by the disabled person.

40 SAID SECTION 4 IS FURTHER AMENDED BY AMENDING SUBSECTION (C) OF SAID SECTION 4 BY
41 STRIKING OUT THE FIRST PARAGRAPH OF SAID SUBSECTION (C) AS SO APPEARING ON LINES 25
42 THROUGH 33 AND INSERTING IN PLACE THEREOF THE FOLLOWING: -

43 (c) refer immediately any such reports which allege the occurrence of abuse of a disabled
44 person whose caretaker is other than an agency of the commonwealth, a facility licensed by
45 an agency of the commonwealth or a private agency which provides services or treatment to
46 disabled persons pursuant to a contract or agreement with an agency of the commonwealth to
47 the commission; the department of mental health in those cases where the disabled person is
48 suffering from a mental illness, the department of mental retardation where the disabled
49 person is a person with mental retardation, or to the Massachusetts rehabilitation commission
50 where the disabled person is otherwise physically disabled. Upon such referral, the
51 commission or said department shall immediately designate an investigator who shall
52 investigate such allegation of abuse as provided in section five.

53 Said Section 4 is further amended by adding immediately after subsection (c) of said Section 4 the following
54 language" -

55 (d) In every case in which an investigation is conducted pursuant to section 4(b) or section
56 4(c) of chapter 19C and the alleged victim is at risk of harm, the appropriate protective service
57 agency as designated by the commission shall make reasonable efforts to alleviate the risk of

58 further harm by providing protective services not later than the initiation of said investigation
59 to insure the safety of the disabled person. In conducting such investigation, the designated
60 investigator may seek and utilize the assistance of municipal and state police. If during said
61 investigation, access to the disabled person is denied to the designated investigator, an
62 appropriate municipal or state police officer shall, upon request, accompany the designated
63 investigator to gain access to the disabled person.

64 Said Section 4 is further amended by striking out the last paragraph of said subsection (c) as so appearing on lines 34
65 through 66 and inserting in place thereof the following:-

66 (E) UPON RECEIPT OF A WRITTEN DETERMINATION AND EVALUATION
67 PREPARED AND FORWARDED TO THE COMMISSION PURSUANT TO THE
68 PROVISIONS OF SECTION 5 OR UPON RECEIPT OF A REPORT OF ABUSE OF A
69 DISABLED PERSON WHERE THE COMMISSION, IN ACCORDANCE WITH
70 WRITTEN STANDARDS ESTABLISHED BY THE COMMISSION, DETERMINES
71 THAT THE REPORT MAY CONTAIN ALLEGATIONS OF CRIMINAL CONDUCT,
72 INCLUDING BUT NOT LIMITED TO (1) A DISABLED PERSON HAS BEEN
73 SEXUALLY ABUSED OR RAPED, OR ASSAULTED OR BATTERED AS SET FORTH
74 IN CHAPTER TWO HUNDRED AND SIXTY-FIVE; (2) A DISABLED PERSON HAS
75 SUFFERED BRAIN INJURY, LOSS OR SUBSTANTIAL IMPAIRMENT OF A BODILY
76 FUNCTION OR ORGAN, OR SUBSTANTIAL DISFIGUREMENT; OR (3) A DISABLED
77 PERSON HAS SUFFERED A SERIOUS BODILY INJURY AS A RESULT OF A
78 PATTERN OF REPETITIVE ACTIONS OR INACTIONS BY A CARETAKER; THE
79 COMMISSION, NOTWITHSTANDING ANY PROVISION OF CHAPTER SIXTY-SIX A
80 REGARDING PERSONAL DATA TO THE CONTRARY, SHALL IMMEDIATELY
81 REFER SUCH REPORT TO THE SPECIAL INVESTIGATIVE UNIT, ESTABLISHED
82 PURSUANT TO SECTION 3(I) OF CHAPTER 19C, WHICH SHALL CONDUCT AN
83 INITIAL EVALUATION AND INVESTIGATION OF THE ALLEGED CRIMINAL
84 CONDUCT. UPON COMPLETION OF SUCH EVALUATION AND INVESTIGATION,
85 SAID SPECIAL INVESTIGATIVE UNIT SHALL REPORT THE RESULTS OF SUCH
86 EVALUATION AND INVESTIGATION TO THE COMMISSIONERS WHO,
87 NOTWITHSTANDING ANY PROVISION OF CHAPTER SIXTY-SIX A REGARDING
88 PERSONAL DATA TO THE CONTRARY, SHALL, IF THE SPECIAL INVESTIGATIVE
89 UNIT HAS DETERMINED THAT THERE IS REASON TO BELIEVE THAT A
90 CRIMINAL OFFENSE HAS BEEN COMMITTED, IMMEDIATELY REFER SUCH
91 REPORT, TOGETHER WITH ANY RELEVANT INFORMATION OBTAINED IN SUCH
92 INITIAL INVESTIGATION, TO THE ATTORNEY GENERAL OR DISTRICT
93 ATTORNEY FOR THE COUNTY WHEREIN THE ALLEGED CRIMINAL OFFENSE
94 OCCURRED. UPON RECEIPT OF SUCH REPORT, THE ATTORNEY GENERAL OR
95 DISTRICT ATTORNEY FOR THE COUNTY WHEREIN THE ALLEGED CRIMINAL
96 OFFENSE OCCURRED SHALL CONTACT THE COMMISSION IN ORDER TO
97 COORDINATE THE INVESTIGATION OF THE MATTERS GIVING RISE TO THE
98 REPORT. AS PART OF SUCH COORDINATION, THE ATTORNEY GENERAL OR
99 THE DISTRICT ATTORNEY MAY REQUEST THAT THE COMMISSION DELAY OR
100 DEFER THE INVESTIGATION OF THE NON-CRIMINAL MATTERS GIVING RISE TO
101 THE REPORT; PROVIDED, HOWEVER, THAT SUCH REQUEST SHALL BE
102 GRANTED ONLY WHERE THE COMMISSION DETERMINES THAT THE HEALTH
103 AND THE SAFETY OF THE ALLEGED VICTIM OF ABUSE SHALL NOT BE
104 ADVERSELY AFFECTED THEREBY AND THAT THE COMMISSION'S OR
105 DEPARTMENT'S ABILITY TO CONDUCT A LATER INVESTIGATION SHALL NOT
106 BE UNREASONABLY IMPAIRED BY SUCH DELAY OR DEFERRAL. IN ALL CASES
107 INCLUDING, BUT NOT LIMITED TO, THOSE IN WHICH THE COMMISSION
108 AGREES TO DELAY OR DEFER THE NON-CRIMINAL INVESTIGATION, THE
109 ATTORNEY GENERAL OR DISTRICT ATTORNEY SHALL KEEP THE COMMISSION
110 INFORMED OF THE STATUS OF THE CRIMINAL INVESTIGATION AND THE

111 COMMISSION SHALL PROVIDE TO THE ATTORNEY GENERAL OR THE DISTRICT
112 ATTORNEY ANY AND ALL INFORMATION THAT MAY BE RELEVANT TO THE
113 CRIMINAL INVESTIGATION. IN CASES IN WHICH THE COMMISSION AGREES TO
114 DELAY OR DEFER THE NON-CRIMINAL INVESTIGATION, IT SHALL MONITOR
115 THE PROGRESS OF THE CRIMINAL INVESTIGATION AND SHALL DETERMINE,
116 AFTER CONSULTATION WITH THE APPROPRIATE LAW ENFORCEMENT
117 AGENCIES, WHEN OR WHETHER THE NON-CRIMINAL INVESTIGATION SHOULD
118 BE INITIATED OR RESUMED.

119 NO PERSON PROVIDING NOTIFICATION OR INFORMATION TO THE
120 COMMISSION, THE COMMISSION'S SPECIAL INVESTIGATIVE UNIT, THE
121 DISTRICT ATTORNEY, OR ATTORNEY GENERAL OR PROVIDING TESTIMONY IN
122 COURT IN FURTHERANCE OF THE PROVISIONS OF THIS SECTION SHALL BE
123 LIABLE IN ANY CIVIL OR CRIMINAL ACTION BY REASON OF SUCH ACTION.

124 **SECTION 4.** SECTION 5 OF CHAPTER 19C OF THE GENERAL LAWS AS APPEARING IN THE 2002
125 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS:

126 THE FIRST SENTENCE AS SO APPEARING ON LINES 1 THROUGH 4, SHALL BE
127 AMENDED BY DELETING THE WORDS "THE GENERAL COUNSEL," AND BY
128 FURTHER STRIKING OUT THE WORDS "EXECUTIVE OFFICE OF HUMAN SERVICES"
129 AND INSERTING IN PLACE THEREOF THE WORDS " EXECUTIVE OFFICE OF HEALTH
130 AND HUMAN SERVICES"

131 SUBSECTION (1) OF SAID SECTION 5, AS SO APPEARING, IS HEREBY AMENDED BY
132 STRIKING OUT ON LINES 7 AND 8 THE WORDS "COUNSEL OR DEPARTMENT OF
133 MENTAL HEALTH OR THE DEPARTMENT OF PUBLIC HEALTH" AND INSERTING IN
134 PLACE THEREOF THE WORDS: -

135 THE DEPARTMENT OF MENTAL HEALTH, THE DEPARTMENT OF MENTAL
136 RETARDATION OR THE MASSACHUSETTS REHABILITATION COMMISSION.

137 Said subsection (1) of said Section 5 as so appearing, is hereby further amended by striking out on lines 16 and 18
138 the words "to the general counsel and to the department of mental health and the department of public health" and
139 inserting in place thereof the words: -

140 AND TO THE DEPARTMENT OF MENTAL HEALTH, THE DEPARTMENT OF
141 MENTAL RETARDATION OR THE MASSACHUSETTS REHABILITATION
142 COMMISSION, AS APPROPRIATE.

143 SUBSECTION (3) OF SAID SECTION 5, AS SO APPEARING, IS HEREBY AMENDED BY STRIKING OUT
144 THE WORDS "THE GENERAL COUNSEL, THE DEPARTMENT OF MENTAL HEALTH AND THE
145 DEPARTMENT OF PUBLIC HEALTH" AS APPEARING ON LINES 42 AND 43 AND INSERTING IN PLACE
146 THEREOF THE WORDS: -

147 AND THE DEPARTMENT OF MENTAL HEALTH, THE DEPARTMENT OF MENTAL
148 RETARDATION OR THE MASSACHUSETTS REHABILITATION COMMISSION, AS
149 APPROPRIATE.

150 SUBSECTION (5) OF SAID SECTION 5, AS SO APPEARING, IS HEREBY AMENDED; BY DELETING THE
151 SECOND AND THIRD PARAGRAPHS THEREOF AS SO APPEARING ON LINES 59 THROUGH 77.

152 **SECTION 5.** SECTION 6 OF CHAPTER 19C OF THE GENERAL LAWS AS APPEARING IN THE 2002
153 OFFICIAL EDITION, IS HEREBY AMENDED BY STRIKING OUT THE FIRST PARAGRAPH AS SO
154 APPEARING ON LINES 1 THROUGH 9 AND INSERTING IN PLACE THEREOF THE FOLLOWING: --

155 Acting through state agencies within the executive office of health and human services designated by the
156 commission for the purpose of providing protective services as necessary to prevent further abuse in cases
157 investigated pursuant to this chapter and subject to the oversight of the commission, the commission shall:

158 **SECTION 6.** SECTION 7 OF CHAPTER 19C OF THE GENERAL LAWS AS APPEARING IN THE 2002
159 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS: --

160 SUBSECTION (A) OF SAID SECTION 7, AS SO APPEARING, IS HEREBY AMENDED BY
161 STRIKING OUT THE WORDS "THE GENERAL COUNSEL, DEPARTMENT OF MENTAL HEALTH
162 OR THE DEPARTMENT OF PUBLIC HEALTH" AS SO APPEARING ON LINES 1 AND 2, AND
163 INSERTING IN PLACE THEREOF THE WORDS: -

164 THE DEPARTMENT OF MENTAL HEALTH, THE DEPARTMENT MENTAL
165 RETARDATION OR THE MASSACHUSETTS REHABILITATION COMMISSION.

166 SUBSECTION (A) OF SAID SECTION 7, AS SO APPEARING, IS HEREBY FURTHER AMENDED
167 BY DELETING THE WORD "COUNSEL, " AS SO APPEARING ON LINE 5.

168 SUBSECTION (B) OF SAID SECTION 7, AS SO APPEARING, IS HEREBY AMENDED BY
169 DELETING THE WORDS "COUNSEL OR" AS SO APPEARING ON LINE 31 AND ON LINE 35,

170 Subsection (b) of said section 7, as so appearing, is hereby further amended by striking out the phrase ". . .
171 the court may order the provision of protective services on an emergency basis. . ." as appearing on lines 46
172 and 47 and inserting in its stead the following words: -

173 AND NO OTHER PERSON WHO IS AUTHORIZED TO CONSENT IS AVAILABLE
174 OR WILLING TO CONSENT, THE COURT MAY ORDER PROTECTIVE SERVICES
175 ON AN EMERGENCY BASIS AND THE COURT IN ORDERING THE PROVISION
176 OF PROTECTIVE SERVICES ON AN EMERGENCY BASIS MAY APPOINT A
177 CONSERVATOR, GUARDIAN OR OTHER PERSON AUTHORIZED TO CONSENT
178 TO THE PROVISION OF PROTECTIVE SERVICES; PROVIDED HOWEVER, THAT
179 THE COURT SHALL ESTABLISH THE LEAST RESTRICTIVE FIDUCIARY
180 REPRESENTATION THAT WILL SATISFY ADDRESSING THE EMERGENCY
181 AND NEEDS OF SUCH DISABLED PERSON.

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183 SUBSECTION (B) OF SAID SECTION 7, AS SO APPEARING, IS HEREBY FURTHER AMENDED
184 BY STRIKING OUT THE WORDS "SAID ORDER MAY BE EXTENDED FOR AN ADDITIONAL
185 SEVENTY-TWO HOUR PERIOD IF THE COURT FINDS THAT SUCH EXTENSION IS NECESSARY
186 TO REMOVE THE EMERGENCY" AS SO APPEARING ON LINES 51 THROUGH 53 AND
187 INSERTING IN ITS STEAD THE FOLLOWING WORDS: -

188 SAID ORDER MAY BE EXTENDED FOR AN ADDITIONAL PERIOD OF TIME IF
189 THE COURT FINDS THAT SUCH EXTENSION IS NECESSARY TO REMOVE THE
190 EMERGENCY OR TO ADDRESS THE NEEDS OF SUCH DISABLED PERSON.

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192 Subsection (c) of said section 7 is hereby amended by deleting on line 58 the word "counsel"

193 **SECTION 7.** SECTION 8 OF CHAPTER 19C OF THE GENERAL LAWS AS APPEARING IN THE 2002
194 OFFICIAL EDITION, IS HEREBY AMENDED BY STRIKING OUT THE WORDS ". . . WHOSE CARETAKER
195 IS A STATE AGENCY", AS SO APPEARING ON LINES 2 AND 6, AND INSERTING IN PLACE THEREOF
196 THE WORDS:

197 . . . WHOSE CARETAKER IS AN AGENCY OF THE COMMONWEALTH, A
198 FACILITY LICENSED BY AN AGENCY OF THE COMMONWEALTH OR A
199 PRIVATE AGENCY WHICH PROVIDES SERVICES OR TREATMENT TO
200 DISABLED PERSONS PURSUANT TO A CONTRACT OR AGREEMENT WITH AN
201 AGENCY OF THE COMMONWEALTH

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203 **SECTION 8.** SECTION 9 OF CHAPTER 19C, AS APPEARING IN THE 2002 OFFICIAL EDITION, IS
204 HEREBY AMENDED AS FOLLOWS: --

205 BY STRIKING OUT LINE 1 AND LINE 2, AS SO APPEARING, AND INSERTING IN
206 PLACE THEREOF THE WORDS: -

207 UPON COMPLETION OF ANY INVESTIGATION CONDUCTED PURSUANT TO
208 THIS CHAPTER, INCLUDING BUT NOT LIMITED TO A FORMAL
209 INVESTIGATION CONDUCTED PURSUANT TO SECTION EIGHT, AND
210 NOTWITHSTANDING ANY PROVISION OF CHAPTER SIXTY-SIX A
211 REGARDING PERSONAL DATA TO THE CONTRARY, THE COMMISSION
212 SHALL:

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214 SECTION 9 OF SAID CHAPTER 19C, AS SO APPEARING, IS HEREBY FURTHER AMENDED BY ADDING
215 THE FOLLOWING SUBSECTION AFTER SUBSECTION (D) OF SAID SECTION 9 OF SAID CHAPTER 19C:
216 -

217 (E) REFER ANY MATTERS FOR WHICH THERE IS REASON TO BELIEVE THAT
218 PROFESSIONAL MISCONDUCT HAS OCCURRED TO THE AGENCY OF THE
219 COMMONWEALTH HAVING JURISDICTION OVER SUCH PROFESSIONAL
220 CONDUCT FOR POSSIBLE IMPOSITION OF DISCIPLINARY MEASURES IN
221 ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE LAW OR
222 REGULATION.

223 **SECTION 9.** SECTION 13 OF CHAPTER 19C, AS APPEARING IN THE 2002 OFFICIAL EDITION, IS
224 HEREBY AMENDED BY STRIKING OUT AS SO APPEARING ON LINE 1 THROUGH LINE 3 THE
225 FOLLOWING WORDS: -

226 "WHOSE CARETAKER WAS A STATE AGENCY OR AN AGENCY OF ANY
227 SUBDIVISION OF THE COMMONWEALTH OR A PRIVATE AGENCY CONTRACTING
228 WITH THE COMMONWEALTH"

229 AND INSERTING IN PLACE THEREOF THE FOLLOWING:-

230 "WHOSE CARETAKER IS AN AGENCY OF THE COMMONWEALTH, A SUBDIVISION
231 OF THE COMMONWEALTH, A FACILITY LICENSED BY AN AGENCY OF THE

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COMMONWEALTH OR A PRIVATE AGENCY WHICH PROVIDES SERVICES OR
TREATMENT TO DISABLED PERSONS PURSUANT TO A CONTRACT OR AGREEMENT
WITH AN AGENCY OF THE COMMONWEALTH”